

- Group I: Claims 39-73, drawn to a method for treating an individual with a tumor resistant or refractory to a taxane, comprising administering to the individual an effective amount of a compound of the structure provided in claim 39; and
- Group II: Claims 74-107, drawn to an article of manufacture and packaged pharmaceutical composition including a label which indicates that said pharmaceutical composition can be used for the treatment of an individual suffering from a cancer or tumor resistant or refractory to a taxane, wherein said pharmaceutical composition comprises a compound of claim 74.

The Examiner reasons as follows: The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they are deemed as lacking the same or corresponding special technical features for the following reasons: "[T]he claimed structure of claims 39, 74, 91 is not novel (McKeage et al, Cancer Chemother Pharmacol, 1995, 36: 451-458, page 2)."

Applicants traverse this requirement and request consideration of all claims together in this application, for the reasons set forth below.

#### **REMARKS**

The common feature of the invention that runs through all of the artificial groups of the restriction relates to the discovery of a treatment for individuals with tumors resistant or refractory to a taxane with a platinum-based compound having the structure, for example, shown in Claim 39, and therefore the embodiments AS CLAIMED are seen to be properly examined together under 37 C.F.R. §1.475.

The claims are related as a method for treating an individual with a tumor that is resistant or refractory to a taxane by administering a platinum-based compound and a pharmaceutical composition specifically adapted to said method. As such, a search of the subject matter of the claims of Group I will reveal all art related to the claims of the subject matter of Group II and *vice versa*.

For the reasons set forth above, Applicants respectfully submit that the claims as grouped for restriction by the Examiner do not represent separate or distinct inventions, and the search of all claims together in one application would not place a serious burden on the Patent Office. Accordingly, withdrawal of the restriction requirement is respectfully requested.

#### **Conclusion and Provisional Election**

Applicants submit that in view of the foregoing remarks, all the claims are seen to relate to a single inventive concept, and the claims are in a form and are of the sort that is properly

viewed as relating to a single invention that should not be restricted under 35 U.S.C. §121 or 35 U.S.C. §372. Applicants respectfully request that the restriction and election requirements of the Office Action of March 31, 2009 be reconsidered and withdrawn.

Election of Group

In addition to electing Group I or II for further examination, the Examiner has also required election of a particular taxane (if present), election of a specific cancer type, and election of a single anti-cancer therapeutic agent (if present).

In order to be fully responsive to the Office Action, Applicants provisionally elect for examination the claims of Group I (i.e., Claims 39-73) drawn to a method for treating an individual with a tumor resistant or refractory to a taxane, comprising administering to the individual an effective amount of a compound of the structure provided in claim 39, for further examination on the merits.

Election of Species

Applicants elect the method in the absence of a taxane.

Cancer/tumor:

Applicants elect prostate cancer.

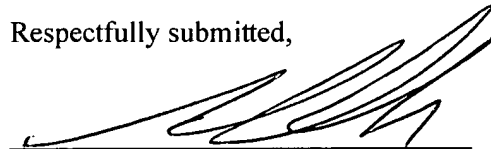
Anti-cancer therapeutic co-agent:

Applicants elect the method in the absence of an anti-cancer therapeutic co-agent.

Claims readable on the foregoing elected species are: Claims 39-47, 52-55, 57-65, and 70-72.

Applicants expressly reserve the right to pursue the subject matter of the claims of Group II in a divisional application, should the present restriction be made final.

Respectfully submitted,



Leon R. Yankwich, Reg. No. 30,237  
David G. O'Brien, Reg. No. 46,125  
Attorneys for Applicants  
YANKWICH & ASSOCIATES, P.C.  
201 Broadway  
Cambridge, Massachusetts 02139  
telephone: (617) 374-3700  
telefax: (617) 374-0055



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May 29, 2009

date of mailing

M. F. Chinappi

Margaret F. Chinappi